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Supreme Court of the United States

OCTOBER TERM, 1965

No. 588

AARON SOLOMON, APPELLANT,

versus

THE STATE OF SOUTH CAROLINA, RESPONDENT

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS

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Respondent moves to dismiss on the ground that the question presented is so unsubstantial as not to need further argument.

Appellant seeks review by appeal of a question which is foreclosed by the decisions of this Court in *Braunfeld v. Brown*, 366 U. S. 599, 6 L. Ed. (2d) 563; *McGowan v. Maryland*, 366 U. S. 420, 6 L. Ed. (2d) 393; *Gallagher v. Crown Kosher Supermarket*, 366 U. S. 617, 6 L. Ed. (2d) 536; and *Two Guys from Harrison-Allentown v. McGinley*, 366 U. S. 582, 6 L. Ed. (2d) 551.

Appellant, in his jurisdictional Statement (p. 8), states that in *Braunfeld* this Court sustained the validity of a Pennsylvania criminal statute which proscribed the retail sale of certain enumerated commodities on Sunday, holding that the statute, as applied to retail merchants who were members of the Orthodox Jewish faith, "which requires the closing of their places of business and a total abstention of all manner of work from nightfall each Friday until nightfall each Saturday", (366 U. S. 601), did not violate the "free exercise" clause of the First Amendment. This is precisely what he states to be the question presented in the instant appeal.

Sherbert v. Verner, 374 U. S. 398, 10 L. Ed. (2d) 965, in the view of a majority of this Court, made no change in the holding of *Braunfeld.* In fact, it expressly recognized that there was present in *Braunfeld* a countervailing factor not present in *Sherbert*—a strong state interest in providing one uniform day of rest for all workers. (10 L. Ed. (2d) 973.)

The Supreme Court of South Carolina (Appendix A, p. 13a) in its opinion scrupulously applied the logic of this Court in differentiating between *Braunfeld* and *Sherbert.*

This Court has recently (34 L. W. 3108) denied review of *Paine Drug Co. v. New York,* No. 376, an unlawful Sunday sales case, indicating that no substantial Federal question was presented.

For the foregoing reasons, Respondent's Motion to Dismiss should be granted.

Respectfully submitted,

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END